

EXHIBIT 97

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3

4 NIKKI BOLLINGER GRAE, Individually
and on Behalf of All Others
5 Similarly Situated,
6 Plaintiff, Civil Action No.
7 vs. 3:16-cv-02267
8 CORRECTIONS CORPORATION OF
AMERICA, ET AL.,
9
10 Defendants.

11
12
13
14 VIDEOTAPED DEPOSITION OF WILLIAM DALIUS
15

16 Conducted virtually via remote videoconference
17 October 28, 2020
18
19
20
21
22

23 Reported by:
Misty Klapper, RMR, CRR
24 Job No.: 10073531
25

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3

4 NIKKI BOLLINGER GRAE, Individually
and on Behalf of All Others

5 Similarly Situated,

6 Plaintiff, Civil Action No.

7 vs. 3:16-cv-02267

8 CORRECTIONS CORPORATION OF
AMERICA, ET AL.,
9

Defendants.
10

11
12
13
14
15
16
17 Videotaped deposition of WILLIAM DALIUS, taken on
18 behalf of Plaintiff, via Zoom remote videoconference,
19 beginning at 10:30 a.m. CST on Wednesday, October 28, 2020,
20 before Misty Klapper, RMR, CRR.
21
22
23
24
25

1 APPEARANCES:
2 (ALL APPEARANCES VIA ZOOM REMOTE VIDEOCONFERENCE)
3 ON BEHALF OF PLAINTIFF:

4 CHRISTOPHER HAMP LYONS, ESQUIRE
5 ROBBINS GELLER RUDMAN & DOWD LLP
6 414 Union Street, Suite 900
7 Nashville, Tennessee 37219
8 (615) 244-2203
9 E-mail: clyons@rgrdlaw.com

10 AND

11 KENNETH J. BLACK, ESQUIRE
12 ROBBINS GELLER RUDMAN & DOWD LLP
13 Post Montgomery Center
14 One Montgomery Street, Suite 1800
15 San Francisco, California 94104
16 (415) 288-4545
17 E-mail: kennyb@rgrdlaw.com

18 ON BEHALF OF DEFENDANTS:

19 MILTON S. McGEE, III, ESQUIRE
20 RILEY, WARNOCK & JACOBSON
21 1906 West End Avenue
22 Nashville, Tennessee 37203
23 (615) 320-3700
24 E-mail: tmcgee@rwjplc.com

25 AND

26 MORGAN E. WHITWORTH, ESQUIRE
27 LATHAM & WATKINS, LLP
28 505 Montgomery Street, Suite 2000
29 San Francisco, California 94111-2562
30 (415) 391-0600
31 E-mail: morgan.whitworth@lw.com

32 ALSO PRESENT: DeSHAWN WHITE, VIDEO OPERATOR

1 The court reporter may now swear in
2 or affirm the deponent.

3 MS. REPORTER: One moment.

4 Whereupon:

5 WILLIAM DALIUS,
6 was called for examination, and, after being duly
7 sworn, was examined and testified as follows:

8 MS. REPORTER: You may proceed.

9 EXAMINATION BY COUNSEL FOR PLAINTIFF

10 BY MR. LYONS:

11 Q. Good morning, Mr. Dalius. How are
12 you?

13 A. Good morning. Doing well. How are
14 you?

15 Q. Good. Thanks.

16 So you -- you recall, I assume, that
17 you -- you had your deposition taken once in this
18 case already, right?

19 A. That's correct.

20 Q. And you were under oath in that
21 deposition, right?

22 A. Correct.

23 Q. The testimony you gave was -- was the
24 whole truth and nothing but the truth; is that
25 right?

1 looked at the overall picture when we did
2 evaluations of prisons.

3 Q. Did you compare the numbers of
4 correctional staff deaths between CCA-operated
5 prisons and BOP-operated prisons?

6 A. No, sir. As I indicated, we looked
7 at it as a whole.

8 Q. Did you compare the number of inmate
9 deaths due to inadequate delivery of medical
10 services between CCA-operated -- operated prisons
11 and BOP-operated prisons?

12 A. We looked at -- we -- we -- we
13 evaluated deaths as a system overall.

14 Q. Did you compare the numbers of
15 significant findings between BOP-operated prisons
16 and CCA-operated prisons?

17 A. I personally did not, but I will say
18 that significant findings happen at every prison,
19 so they -- all prisons have findings, whether
20 they be private prisons or BOP prisons.

21 Q. Did you compare the numbers of repeat
22 deficiencies at CCA-operated prisons to
23 BOP-operated prisons?

24 A. No, sir. As I indicated before, we
25 looked at -- when I was doing evaluations I

1 looked at all the facilities. BOP and CoreCivic
2 and -- every prison has repeat deficiencies.
3 It's unavoidable. It's the nature of the
4 business.

5 Q. Did you compare the numbers of double
6 repeat deficiencies between CCA-operated prisons
7 and BOP-operated prisons?

8 A. I did not. Again, as I indicated, we
9 looked at -- at universe overall.

10 Q. Did you compare the numbers of triple
11 repeat deficiencies between CCA-operated prisons
12 and BOP-operated prisons?

13 A. I -- I -- I would give you the same
14 answer. It -- it -- it -- whether you get to
15 that point and you have systemic issues that
16 occur, that would be brought to somebody's
17 attention, but it's not uncommon for facilities
18 to have repeat deficiencies.

19 Q. So you'd agree that a triple repeat
20 deficiency indicates that you have a systemic
21 problem that is occurring, right?

22 MR. MCGEE: Object to the form of
23 the question.

24 THE WITNESS: It depends on the
25 deficiency.

1 I'm sorry.

2 BY MR. LYONS:

3 Q. And did you compare the numbers of
4 quadruple repeat deficiencies between the
5 CCA-operated BOP prisons and the BOP-operated
6 prisons?

7 A. Again, we reviewed all facilities'
8 operations. And if there are systemic issues, we
9 would look at the magnitude, what the
10 deficiencies are and whether or not we had to
11 provide some type of correction action --
12 corrective action, whether it be a BOP facility
13 or a private facility.

14 Q. But in terms of your analysis
15 comparing CCA's operational performance to the
16 BOP's operational performance, you didn't do
17 any -- any rigorous analysis of the numbers of
18 all those types of repeat deficiencies and
19 significant findings between CCA-operated prisons
20 and BOP prisons, did you?

21 A. I personal --

22 MR. MCGEE: Object to the form of
23 the question.

24 THE WITNESS: I personally did not
25 do that. We had staff in our program

1 (Thereupon, a discussion was had off
2 the record.)

3 (Thereupon, at 12:44 p.m. CST, a
4 lunch recess was taken.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION (1:22 p.m. CST)

2 VIDEO OPERATOR: The time is
3 1:22 p.m. and we are now on the record.

4 MR. LYONS: Thanks.

5 BY MR. LYONS:

6 Q. Mr. Dalius, could you please turn
7 back to Exhibit 589, which is defendants'
8 disclosures.

9 A. Was that --

10 Q. It was tab 1 if that helps, T1.

11 A. Oh, that's the -- the FRCP 26?

12 Q. Yes.

13 A. Okay. I'm -- I'm there.

14 Q. Looking under the -- that first
15 heading, number 1, Subject Matter of Testimony,
16 do you see where the last sentence says,
17 Mr. Dalius may also testify about his
18 expectations for the renewal and retention of
19 CoreCivic's BOP contracts?

20 You see that?

21 A. Yes.

22 Q. And then also looking at the last
23 sentence under heading 2, do you see where it
24 says, Mr. Dalius may also testify that he
25 expected CoreCivic's BOP contracts to be renewed

1 based on the knowledge and experience he gained
2 from serving as a senior executive with the BOP
3 and CoreCivic?

4 A. Yes, sir.

5 Q. You see that?

6 At what time do you plan to testify
7 that you expected CoreCivic's BOP contracts to be
8 renewed?

9 MR. MCGEE: Object to the form of
10 the question.

11 THE WITNESS: So was this -- was
12 this in my prior role or my current role?

13 BY MR. LYONS:

14 Q. That's my question partly.

15 A. I -- in my current role I expect them
16 all to be renewed.

17 Q. But do you plan to testify that as of
18 February 27, 2012 to August 17, 2016 you
19 specifically expected CoreCivic's BOP contracts
20 to be renewed?

21 A. I expected all private contracts to
22 be renewed unless there was just some really
23 undistinguished or something -- something that
24 may have occurred that -- that they would have
25 violated the contract.

1 Q. So if -- if the BOP did not renew a
2 contract, that would mean that something --
3 something bad happened that -- that violated the
4 contract?

5 (Crosstalk)

6 MR. MCGEE: Object -- object to the
7 form of the question.

8 Go -- go ahead, Bill.

9 THE WITNESS: Okay. And -- and I'm
10 sorry to the court reporter. I know I
11 jumped in.

12 Not necessarily -- not -- not
13 necessarily, sir. Contracts were not
14 renewed for a number of reasons, but
15 typically, from my recollection, the reason
16 contracts were not awarded was a cost
17 reason.

18 So if the contracts were currently at
19 a higher level than what the market was
20 showing, the -- the possibility of not
21 getting renewal occurred.

22 BY MR. LYONS:

23 Q. So what about contracts rebids? Did
24 you expect that when CoreCivic's BOP contracts
25 were rebid that CoreCivic would win the -- the

1 Q. Is there a document somewhere that
2 shows somebody telling you that we are awarding
3 this contract to GEO instead of CCA exclusively
4 because of the housing of multiple populations?

5 A. I don't know the answer to that.
6 Could be. Don't know.

7 Q. And if Mr. Hininger told CCA's board
8 of directors that one of the two reasons that the
9 CCA proposal for requirement A was unsuccessful,
10 was -- in the past performance section of our
11 proposal, concerns about our performance in
12 medical services at our Cibola, New Mexico and
13 Eden, Texas facilities were raised, was he
14 misleading the CCA board of directors?

15 MR. MCGEE: Object to the form of
16 the question.

17 THE WITNESS: I -- I can't speak
18 for Mr. Hininger. I'm not sure what he
19 told the board of directors.

20 BY MR. LYONS:

21 Q. Looking back at Exhibit 589, the
22 penultimate sentence, you see it begins with
23 Mr. Dalius may also testify that CoreCivic
24 delivers comparable correctional services at a
25 lower cost than the BOP and describe the various

1 cost components supporting that opinion?

2 A. Yes, sir, I see that.

3 Q. Do you plan to give that testimony?

4 A. Yes, sir.

5 Q. What are the cost components you plan
6 to testify about in that regard?

7 A. I -- I can tell you the major drivers
8 and the difference between cost between CoreCivic
9 and the BOP are the BOP does not include capital
10 expenditures. So if they go build a \$350 million
11 low security prison, that is not included in
12 their daily per capita that they publish to the
13 Congress.

14 BOP pensions from retirees are not
15 included in the BOP per capita. They -- they
16 average national -- what they would call
17 national-type expenses that are, like, phone and
18 postage and things that are captured nationally
19 and prorate that across the system. So it
20 could -- could -- could be off a little bit by
21 those areas. But the major drivers are the CapEx
22 things and any -- any -- when I say CapEx, the
23 construction of the facilities themselves is not
24 included, any major -- any major renovations over
25 \$10,000 would not be included in their

1 per capita, whereas with CoreCivic, we have to
2 include those in our costs. I mean, that's
3 what -- we've -- we've got to maintain -- we've
4 got to cover all of our cost of operations in
5 order to function.

6 So there -- there's -- there's a -- a
7 multitude of things that the BOP omits. If they
8 have a riot in a facility, they take those
9 expenses out against that facility. Say they had
10 a riot in a low security facility. They would
11 exclude those. If they've got a major medical
12 catastrophic -- say a guy had a heart attack,
13 went downtown and it cost 300,000 to fix the
14 heart attack or an inmate put on a med that cost
15 several hundred thousand, they -- they exclude
16 those costs.

17 And I know that because I developed
18 the per capita for the Bureau of Prisons when I
19 worked in budget execution. So it's -- it's --
20 it's really -- you can make an apples-and-apples
21 by adding those things back into BOP's
22 per capita, but the -- clearly the cost for
23 CoreCivic is much lower than it is for the BOP.

24 Q. Are there any other cost components
25 that you plan to testify about?

1 A. They would be the major components
2 that -- that have the biggest impact on -- on the
3 differences.

4 Q. So any other components you don't
5 think would have a material impact?

6 A. They would have the most material
7 impact.

8 Q. Can you think of any others that
9 would have a material impact?

10 A. Not as material as those, but the --
11 the pension and the -- the -- the construction of
12 the actual facilities and the repairs and
13 maintenance of anything over \$10,000 are -- are
14 huge components of the cost factors.

15 Q. And then what about on the CCA side
16 of the equation? What costs do you include?

17 A. Well, that's a given because BOP
18 knows exactly what they're paying for the
19 per diem. So they're all -- they're all
20 included. When we bid on a job, we've got to
21 include all of our costs.

22 Q. So the only cost to the government of
23 CCA operating a BOP prison is a per diem that the
24 government pays to CCA; is that your testimony?

25 A. That's correct. That's correct.

1 Q. Is there something called a
2 privatization management branch in the BOP?

3 A. Yes.

4 Q. Who pays for that?

5 A. The government, taxpayers, the Bureau
6 of Prisons.

7 Q. Are there public sector employees who
8 write the contract for a private prison?

9 A. Anybody that works for the BOP is a
10 public employee.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay. Sorry, I didn't mean to cut
14 you off.

15 And who pays for the public sector
16 employees who write the contracts for a private
17 prison?

18 A. The Bureau of Prisons.

19 Q. Is it -- it's BOP employees that
20 decide and -- and manage the process of awarding
21 a contract to CCA, right?

22 A. Yes, sir.

23 Q. And who pays for that?

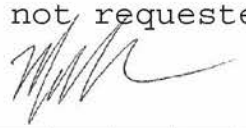
24 A. And -- and -- and the other
25 components.

1 CERTIFICATE OF NOTARY

2 I, MISTY KLAPPER, the officer before
3 whom the foregoing deposition was taken, do
4 hereby certify that the witness whose
5 testimony appears in the foregoing
6 deposition was duly sworn by me; that the
7 testimony of said witness was taken by me in
8 shorthand and thereafter reduced to
9 typewriting by me; that said deposition is a
10 true record of the testimony given by said
11 witness; that I am neither counsel for,
12 related to, nor employed by any of the
13 parties to the action in which this
14 deposition was taken; and, further, that I
15 am not a relative or employee of any
16 attorney or counsel employed by the parties
17 hereto, nor financially or otherwise
18 interested in the outcome of this action.

19 Further, that if the foregoing pertains to
20 the original transcript of a deposition in a federal
21 case, before completion of the proceedings, review
22 of the transcript [X] was [] was not requested.

23 Dated: November 4, 2020

24 
Misty Klapper, RMR, CRR
25 and Notary Public